

Attorney Docket # 4285-7

Serial No. 10/691,404
Amdt. dated April 3, 2005
Reply to Final Rejection dated February 3, 2005

REMARKS/ARGUMENTS

The Final Rejection mailed February 3, 2005 has been reviewed and carefully considered. Claims 1, 2, 4, 5, 7-9, 12, 15, 20, 22-29, 31, 34, 36-39, 42-47, 49, 52, 54, and 55 are pending, with Claims 1, 26, and 27 being in independent form. Claims 3, 6, 13, 14, 16, 17, and 30 were previously cancelled, and Claims 10, 11, 18, 19, 21, 32, 33, 35, 40, 41, 48, 50, 51, 53 have been withdrawn by the Examiner who alleges that they are directed to independent and distinct inventions. In the present Amendment, Claims 1, 9, 26, 27, 44, and 54 are being amended in order to obviate the Examiner's rejections under §112, first and second paragraph, in the February 3, 2005.

In ¶5 of the Final Rejection, the Examiner rejected all of the pending claims under §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the Examiner found the phrase "the graphite powder coats the zinc particles comprising the zinc powder" recited in independent Claims 1, 26, and 27 confusing. Applicant's representative believes that the phrase is not confusing, as most powders are comprised of particles. However, the offending phrase is being removed in the present Amendment, thereby removing any confusion it may have caused. It should be noted that the removal of this phrase also results in a broadening of the independent claims, as it removes a limitation. The Examiner asserted that the phrase "metallic particles" in Claim 9 lacked antecedent basis. Without agreeing or disagreeing with this assertion, applicant deletes this phrase from Claim 9, thereby obviating the rejection. Lastly, the Examiner pointed out that the phrase "the delay fuse composition" in Claims 44 and 54 lacked antecedent basis, and this lacking is being corrected in the present Amendment. Because Claims 1, 9, 26, 27, 44, and 54, either as originally presented or as currently amended, comply with the requirements of §112, second paragraph, withdrawal of the rejection is respectfully requested.

In ¶3 of the Final Rejection, the Examiner rejected Claims 7, 8, and 12 under §112, first paragraph, as failing to comply with the written description requirement. Specifically, the Examiner alleges that the specification does not disclose a ballast comprising a mixture of zinc, graphite, and other particles besides zinc and graphite. However, Claim 12 of the application as originally filed

Attorney Docket # 4285-7

Serial No. 10/691,404
Amdt. dated April 3, 2005
Reply to Final Rejection dated February 3, 2005

recites a ballast comprising "at least one of zinc particles, lead particles, graphite particles, and tungsten particles". Thus, originally filed Claim 12 recites the combination of all four metals (zinc, lead, graphite, and tungsten), as well as any combination of two or three of those metals. More important, the language of the specification itself, as originally filed, makes it clear that the ballast according to the present invention was not limited to zinc, graphite, or a combination of the two, but rather to "any frangible yet adequately dense material both capable of providing adequate ballast for stability and distance and capable of disintegrating into low mass, low energy fragments upon detonation" (paragraph [0031]). Furthermore, the originally filed application uses examples of combinations of materials, thus making one of ordinary skill in the art aware that any combination of materials fitting the above description could be used in accordance with the present invention. Because Claims 7, 8, and 12 do comply with the requirements of §112, first paragraph, applicant respectfully requests withdrawal of the rejection.

In ¶1 of the Final Rejection, the Examiner withdrew previously added Claims 40, 41, 48, 50, 51, and 53 on the basis that they were directed to an invention that was independent or distinct from the invention originally claimed. This, and other issues concerning the Examiner's restriction requirements, is being dealt with by a Petition filed by applicant's representative on March 1, 2005.

At least on the basis of the foregoing amendments and remarks, allowance of all presently pending claims is respectfully requested.

Respectfully submitted,

COHEN, PONTANI, LIEBERMAN & PAVANE

By



Teodor J. Holmberg
Reg. No. 50,140
551 Fifth Avenue, Suite 1210
New York, New York 10176
(212) 687-2770

Dated: April 3, 2005